



February 20, 2009

HOUSE BILL No. 1408

DIGEST OF HB 1408 (Updated February 18, 2009 4:11 pm - DI 101)

Citations Affected: IC 5-20; IC 25-34.1; noncode.

Synopsis: Mortgage lending practices. Provides that if the total amount in the investigative fund administered by the attorney general and the professional licensing agency to investigate real estate and real estate appraisal fraud exceeds \$750,000 at the end of a state fiscal year: (1) 50% of the amount exceeding \$750,000 remains in the fund; and (2) 50% of the amount exceeding \$750,000 shall be deposited in the home ownership education account administered by the authority. (Current law provides that any amount remaining in the fund at the end of a state fiscal year that exceeds \$750,000 reverts to the state general fund.) Establishes the home ownership preservation task force that consists of: (1) the director of the department; (2) the executive director of the authority; and (3) 13 voting members appointed by the governor. Provides that the director of the department and the executive director of the authority serve as co-chairs and nonvoting members of the task force. Requires the task force to conduct at least five meetings before November 15, 2009, and to do the following: (1) Identify new sources of federal funding that can be used to assist Indiana homeowners or communities that are affected by residential mortgage loan foreclosures. (2) Identify any other new or existing sources of federal, state, or private funding that can be used for, or redirected to, those purposes. (3) Identify methods and sources of available funding to promote the authority's mortgage foreclosure counseling and education program. (4) Make recommendations for any state legislation, rules, or

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Effective: Upon passage; July 1, 2009.

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January 13, 2009, read first time and referred to Committee on Financial Institutions.
February 19, 2009, amended, reported — Do Pass.

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programs that the task force determines are necessary to assist Indiana homeowners or communities that are affected by residential mortgage loan foreclosures. Requires the task force to submit a report to: (1) the legislative council; and (2) the members of the legislative standing committees that have jurisdiction over legislation concerning financial institutions. Establishes the pro bono foreclosure assistance task force that consists of: (1) the chief justice of the supreme court, or the chief justice's designee, who serves as chair of the task force; (2) the president of the Indiana state bar association, or the president's designee; and (3) 15 members appointed by the chief justice. Requires the task force to determine the feasibility of developing, implementing, administering, and promoting a statewide program to provide pro bono legal assistance to Indiana home owners involved in foreclosure proceedings filed in Indiana courts. Requires the task force to report its findings and recommendations to: (1) the legislative council; and (2) the members of the legislative standing committees that have jurisdiction over legislation concerning financial institutions.

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February 20, 2009

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

HOUSE BILL No. 1408

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulation.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 5-20-1-27, AS AMENDED BY P.L.145-2008,
2 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2009]: Sec. 27. (a) The home ownership education account
4 within the state general fund is established to support the home
5 ownership education programs established under section 4(d) of this
6 chapter. The account is administered by the authority.
7 (b) The home ownership education account consists of:
8 (1) ~~fees collected under IC 24-9-9;~~ **any amounts deposited in the**
9 **account under IC 25-34.1-8-7.5(d);** and
10 (2) civil penalties imposed and collected under:
11 (A) IC 6-1.1-12-43(g)(2)(B); or
12 (B) IC 27-7-3-15.5(e).
13 (c) The expenses of administering the home ownership education
14 account shall be paid from money in the account.
15 (d) The treasurer of state shall invest the money in the home

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ownership education account not currently needed to meet the obligations of the account in the same manner as other public money may be invested.

SECTION 2. IC 25-34.1-8-7.5, AS AMENDED BY P.L.57-2007, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7.5. (a) The investigative fund is established to provide funds for administering and enforcing the provisions of this article, including investigating and taking enforcement action against real estate fraud and real estate appraisal fraud. The fund shall be administered by the attorney general and the professional licensing agency.

(b) The expenses of administering the fund shall be paid from the money in the fund. The fund consists of money from a fee imposed upon licensed or certified appraisers and real estate brokers and salespersons under IC 25-34.1-2-7 and IC 25-34.1-3-9.5.

(c) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested.

(d) ~~Except as otherwise provided in this subsection,~~ Money in the fund at the end of a state fiscal year does not revert to the state general fund. If the total amount in the investigative fund exceeds seven hundred fifty thousand dollars (\$750,000) at the end of a state fiscal year after payment of all claims and expenses, the amount that exceeds seven hundred fifty thousand dollars (\$750,000) ~~reverts to the state general fund;~~ **shall be directed as follows:**

(1) Fifty percent (50%) of the amount that exceeds seven hundred fifty thousand dollars (\$750,000) remains in the fund to be used for purposes of the fund.

(2) Fifty percent (50%) of the amount that exceeds seven hundred fifty thousand dollars (\$750,000) shall be deposited in the home ownership education account established by IC 5-20-1-27 and administered by the Indiana housing and community development authority.

(e) Money in the fund is continually appropriated for use by the attorney general and the licensing agency to administer and enforce the provisions of this article and to conduct investigations and take enforcement action against real estate and appraisal fraud under this article. The attorney general shall receive five dollars (\$5) of each fee collected under IC 25-34.1-2-7 and IC 25-34.1-3-9.5, and the licensing agency shall receive any amount that exceeds five dollars (\$5) of each fee collected under IC 25-34.1-2-7 and IC 25-34.1-3-9.5.

SECTION 3. [EFFECTIVE UPON PASSAGE] **(a) As used in this**

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SECTION, "residential mortgage loan" means a loan that is secured by a mortgage or deed of trust on real estate in Indiana on which there is located or will be located a structure or structures that is or will be occupied by a borrower as the borrower's principal dwelling (as defined in IC 24-4.4-1-301(5)). The term includes a first lien mortgage transaction (as defined in IC 24-4.4-1-301(6)).

(b) As used in this SECTION, "task force" refers to the home ownership preservation task force established by subsection (c).

(c) The home ownership preservation task force is established. The task force consists of the following members:

(1) The director of the department of financial institutions, who shall serve as an ex officio, nonvoting member.

(2) The executive director of the Indiana housing and community development authority, who shall serve as an ex officio, nonvoting member.

(3) The following fifteen (15) voting members appointed by the governor:

(A) One (1) member who represents supervised financial organizations (as defined in IC 24-4.5-1-301(20)) that regularly engage in Indiana as creditors in residential mortgage loans.

(B) One (1) member who represents creditors licensed under IC 24-4.4 who regularly engage in Indiana as creditors in first lien mortgage transactions (as defined in IC 24-4.4-1-301(6)).

(C) One (1) member who:

- (i) is a loan broker licensed under IC 23-2-5; and
- (ii) regularly acts as a loan broker in residential mortgage loan transactions in Indiana.

(D) One (1) member who is an attorney who:

- (i) is licensed to practice law in Indiana; and
- (ii) regularly represents homeowners who are defendants in actions to foreclose residential mortgage loans in Indiana.

(E) One (1) member who is a real estate broker licensed under IC 25-34.1.

(F) The executives of the five (5) municipalities in Indiana with the highest rates of residential mortgage loan foreclosures, as determined by the governor with information made available by the Indiana housing and community development authority.

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(G) Three (3) members who are foreclosure prevention counselors who are part of, or have been trained or certified by, the Indiana Foreclosure Prevention Network. In making the appointments under this clause, the governor shall attempt to provide representation to different geographic regions in Indiana.

(H) One (1) member who has professional experience in advertising, media relations, or public relations.

(I) One (1) member who serves on the task force as a homeowner whose residence is located in one (1) of the five (5) municipalities identified under clause (F).

(d) The governor shall appoint the members described in subsection (c)(3) not later than June 1, 2009.

(e) The members described in subsection (c)(1) and (c)(2) shall serve as co-chairs of the task force.

(f) Subject to subsection (g), during the period beginning not earlier than July 1, 2009, and ending not later than November 15, 2009, the task force shall conduct at least five (5) meetings to do the following:

(1) Identify new sources of federal funding that:

(A) are available as a result of:

- (i) recently adopted federal legislation or regulations; or
- (ii) newly created federal programs; and

(B) can be used to:

- (i) assist Indiana homeowners in refinancing their existing residential mortgage loans;
- (ii) assist Indiana homeowners who are delinquent in their residential mortgage loans and facing the foreclosure of their primary residence;
- (iii) rehabilitate neighborhoods or communities in Indiana that have been adversely or disproportionately affected by residential mortgage loan foreclosures; or
- (iv) otherwise assist Indiana homeowners or communities that are affected by the foreclosure or potential foreclosure of residential mortgage loans.

(2) Identify any other new or existing sources of federal, state, or private funding that can be used for, or redirected to, the purposes set forth in subdivision (1).

(3) Identify methods and sources of available funding to promote or otherwise increase the public's awareness of the mortgage foreclosure counseling and education program established by the Indiana housing and community

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development authority under IC 5-20-6. The task force shall consider the feasibility of developing and implementing a statewide multimedia campaign to increase awareness of the program's web site and toll free telephone number through any of the following:

(A) Public service announcements on television and radio.

(B) Print ads and postcards mailed to residences in those neighborhoods or communities in Indiana that have been adversely or disproportionately affected by residential mortgage loan foreclosures.

(C) Billboards in those neighborhoods or communities in Indiana that have been adversely or disproportionately affected by residential mortgage loan foreclosures.

(D) Ads inside and on the exterior of public transit vehicles.

(E) Any other medium the task force considers appropriate or cost effective to increase awareness of the program's web site and toll free telephone number.

(4) Make recommendations for any state legislation, rules, or programs that the task force determines are necessary to:

(A) ensure that the state and its local communities are aware of and receive all funds available to them under federal, state, or private programs designed to assist homeowners and communities that are affected by the foreclosure or potential foreclosure of residential mortgage loans;

(B) implement, fund, or administer a statewide multimedia campaign to increase awareness of the mortgage foreclosure counseling and education program established by the Indiana housing and community development authority under IC 5-20-6; and

(C) otherwise assist Indiana homeowners or communities that are affected by the foreclosure or potential foreclosure of residential mortgage loans.

(g) With respect to any meeting of the task force, one (1) or more members of the task force may participate in the meeting by means of a conference telephone or similar communications equipment by which all persons participating in the meeting can communicate with the member participating by such means. Participation by the means described in this subsection constitutes the person's presence at the meeting.

(h) The affirmative votes of a majority of the voting members

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appointed to the task force under subsection (c)(3) are required for the task force to take action on any measure, including approval of the report to the legislative council and the legislative standing committees required by subsection (k).

(i) Each member of the task force who is not a state employee is not entitled to the minimum salary per diem provided by IC 4-10-11-2.1(b). The member is, however, entitled to reimbursement for traveling expenses as provided under IC 4-13-1-4 and other expenses actually incurred in connection with the member's duties as provided in the state policies and procedures established by the Indiana department of administration and approved by the budget agency.

(j) Each member of the task force who is a state employee is entitled to reimbursement for traveling expenses as provided under IC 4-13-1-4 and other expenses actually incurred in connection with the member's duties as provided in the state policies and procedures established by the Indiana department of administration and approved by the budget agency.

(k) Not later than December 1, 2009, the task force shall submit a report to the legislative council and to the members of the standing committee, in each house of the general assembly, that has jurisdiction over legislation concerning financial institutions. The report required under this subsection must:

(1) Identify:

- (A) any new sources of federal funding described in subsection (f)(1) and identified by the task force;
- (B) the persons or governmental units or agencies eligible to receive the funding;
- (C) any requirements that must be met to receive the available funds;
- (D) any applicable application deadlines or fees; and
- (E) to the extent applicable and determinable by the task force, the appropriate state or local governmental agency or private agency to apply for, or to assist Indiana homeowners or communities in applying for, the available funds.

(2) Identify:

- (A) any other new or existing sources of federal, state, or private funding described in subsection (f)(2) and identified by the task force;
- (B) the persons or governmental units or agencies eligible to receive the funding;

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(C) any requirements that must be met to receive the available funds;

(D) any applicable application deadlines or fees; and

(E) to the extent applicable and determinable by the task force, the appropriate state or local governmental agency or private agency to apply for, or to assist Indiana homeowners or communities in applying for, the available funds.

(3) Identify any recommended methods and sources of available funding to promote the Indiana housing and community development authority's mortgage foreclosure counseling and education program, as determined by the task force under subsection (f)(3). The report must include an assessment of the feasibility of developing and implementing a statewide multimedia campaign to increase awareness of the program's web site and toll free telephone, including an assessment of the feasibility and cost effectiveness of making use each of the media described in subsection (f)(3)(A) through (f)(3)(D).

(4) Include any recommendations for state legislation, rules, or programs that the task force determines are necessary to accomplish the objectives set forth in subsection (f)(4).

The report to the legislative council required by this subsection must be in an electronic format under IC 5-14-6.

(I) This SECTION expires July 1, 2010.

SECTION 4. [EFFECTIVE UPON PASSAGE] (a) As used in this SECTION, "residential mortgage loan" means a loan that is secured by a mortgage or deed of trust on real estate in Indiana on which there is located or will be located a structure or structures that is or will be occupied by a borrower as the borrower's principal dwelling (as defined in IC 24-4.4-1-301(5)). The term includes a first lien mortgage transaction (as defined in IC 24-4.4-1-301(6)).

(b) As used in this SECTION, "task force" refers to the pro bono foreclosure assistance task force established by subsection (c).

(c) The pro bono foreclosure assistance task force is established. The task force consists of the following members:

(1) The chief justice of the supreme court of Indiana, or the chief justice's designee, who shall serve as the chair of the task force.

(2) The president of the Indiana State Bar Association, or the president's designee.

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(3) The following fifteen (15) members appointed by the chief justice of the supreme court of Indiana:

(A) The presidents of the local bar associations in the five (5) municipalities in Indiana with the highest rates of residential mortgage loan foreclosures, as determined by the chief justice with information made available by the Indiana housing and community development authority.

(B) Five (5) circuit or superior court judges. In making the appointments under this clause, the chief justice shall attempt to provide representation to different geographic regions in Indiana.

(C) One (1) member who is an attorney and:

(i) is licensed to practice law in Indiana; and

(ii) regularly represents homeowners who are defendants in actions to foreclose residential mortgage loans in Indiana.

(D) One (1) member who is an attorney and:

(i) is licensed to practice law in Indiana; and

(ii) regularly represents creditors who are plaintiffs in actions to foreclose residential mortgage loans in Indiana.

(E) Upon the recommendation of the executive director of the Indiana housing and community development authority, three (3) members who are foreclosure prevention counselors and are part of, or have been trained or certified by, the Indiana Foreclosure Prevention Network. In making the appointments under this clause, the chief justice shall attempt to provide representation to different geographic regions in Indiana.

(d) The chief justice shall appoint the members described in subsection (c)(3) not later than June 1, 2009.

(e) Subject to subsection (f), the task force shall meet at the call of the chair to do the following:

(1) Determine the feasibility of developing, implementing, and administering a statewide program to provide pro bono legal assistance to Indiana homeowners involved in legal proceedings filed in Indiana courts to foreclose upon the homeowners' residential mortgage loans.

(2) Identify any potential federal, state, or private sources of funding to establish, implement, administer, and promote the program.

(3) Identify potential partnerships with:

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(A) state and local bar associations;

(B) state and local legal clinics and agencies; and

(C) law schools;

to provide volunteer attorneys and training assistance for the program.

(4) Make recommendations concerning any legislation that the task force determines is necessary to establish, implement, administer, promote, and fund the program described in subdivision (1).

(f) With respect to any meeting of the task force, one (1) or more members of the task force may participate in the meeting by means of a conference telephone or similar communications equipment by which all persons participating in the meeting can communicate with the member participating by such means. Participation by the means described in this subsection constitutes presence in person at the meeting.

(g) The affirmative votes of a majority of the members of the task force are required for the task force to take action on any measure, including approval of the report to the legislative council and the legislative standing committees required by subsection (j).

(h) Each member of the task force who is not a state employee is not entitled to the minimum salary per diem provided by IC 4-10-11-2.1(b). The member is, however, entitled to reimbursement for traveling expenses as provided under IC 4-13-1-4 and other expenses actually incurred in connection with the member's duties as provided in the state policies and procedures established by the Indiana department of administration and approved by the budget agency.

(i) Each member of the task force who is a state employee is entitled to reimbursement for traveling expenses as provided under IC 4-13-1-4 and other expenses actually incurred in connection with the member's duties as provided in the state policies and procedures established by the Indiana department of administration and approved by the budget agency.

(j) Not later than December 1, 2009, the task force shall submit a report of its findings and recommendations to:

(1) the legislative council;

(2) the members of the senate standing committee that has jurisdiction over legislation concerning financial institutions; and

(3) the members of the house of representatives standing committee that has jurisdiction over legislation concerning

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1 **financial institutions.**
2 **The report to the legislative council required by this subsection**
3 **must be in an electronic format under IC 5-14-6.**
4 **(k) This SECTION expires July 1, 2010.**
5 **SECTION 5. An emergency is declared for this act.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Financial Institutions, to which was referred House Bill 1408, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, delete lines 4 through 42.

Delete pages 3 through 17.

Page 18, delete lines 1 through 34.

Page 19, delete lines 31 through 42.

Delete page 20.

Page 21, delete lines 1 through 24.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1408 as introduced.)

BARDON, Chair

Committee Vote: yeas 8, nays 0.

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